IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1174 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

RAMJIBHAI KHODABHAI

Appearance:

1. Special Civil Application No. 1174 of 1999

MR PD BHATE, AGP for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/03/2004

ORAL JUDGEMENT

1. The petitioner - Executive Engineer, Water Supply Division of the State of Gujarat has approached this

Court under Article 227 of the Constitution of India to challenge judgment and award made by the Labour Court at Ahmedabad in Reference (LCA) No. 738 of 1987 dated 7th May, 1997. By the said award petitioner has been directed to reinstate respondent on his original post with continuity of service and with full back wages within 30 days from the date of publication of the award.

1.1. It appears from the record of the petition that respondent was working with the petitioner as Sweeper. He was being paid monthly wage at the rate of Rs.15-85 ps. per day. According to him, he had completed 240 days in each year and that he had served the petitioner with all sincerity and his record of service was clean. Inspite of that, after two years of his service, his employment was terminated on 31st October, 1985. His grievance is that because he had participated in the union activity, his superior officers had entertained grudge and they had pressurised him to leave the union and also threatened to terminate his service if he continued with the union activity. Since he did not leave the union, ultimately the order of termination had been passed against him. It is his say that before passing the order, requisite procedure had not been followed; not even notice was issued to him to afford him opportunity of simple hearing.

1.2. He, therefore, raised the dispute which was referred to the Conciliation Officer, but since no settlement could be reached, the industrial dispute was referred to Labour Court for adjudication under the provisions of section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'I.D. Act') by order dated 18th March, 1987.

1.3. Before the Labour Court, respondent filed his statement of claim at Exh. 3 wherein the aforesaid averments were made and reliefs regarding reinstatement with full back wages and all other incidental benefits were prayed for. Initially despite of service of notice no-one on behalf of the present petitioner had appeared and contested the proceedings before the Labour Court and ex-parte award came to be passed on 4th December, 1989. Subsequently the petitioner submitted an application being Misc. Application No. 148 of 1990 for setting aside the ex-parte award, which was granted and the matter was again heard by permitting the petitioner to lead evidence and to cross-examine the witnesses produced on behalf of respondent.

1.4. At the end of the proceedings, the Labour Court

came to the conclusion that the workman had worked for 240 days in a year preceding the order of termination and that the petitioner had not produced any evidence in support of its say that respondent had not worked for 240 days, but had worked for 209 days only in a year. The Labour Court also found that the necessary procedure envisaged under the I.D. Act was not followed before terminating service of the respondent and therefore, the termination order was bad in law. In view of the aforesaid findings, of the Labour Court allowed the reference and ordered reinstatement on the original post with continuity of service and payment of full back wages. It is this award which is now being challenged before this Court.

2. Mr. P.D. Bhate, Ld. AGP appearing for the petitioner has submitted that the award of the Labour Court was erroneous because it proceeded on the footing that the respondent had Completed 240 days in a year which was not true. He has further submitted that he had left the service voluntarily and no order of termination was passed against him. He, therefore, submits that this petition deserves to be allowed.

2.1. Mr. Dharmesh Bhatt, learned advocate appearing for respondent has supported the judgment of the Labour Court.

3. Having gone through the record of this petition and in particular the judgment of the Labour Court, it clearly appears that respondent had in no uncertain terms put forward a case that he had worked for 240 days in a year. It is obvious that he may not have any record with him to prove the same. However, when he has stated this fact which was contested by the petitioner, then it was the bounden duty of the petitioner to produce necessary record to substantiate its say. The say of the petitioner was that respondent had merely worked for 209 days in a year and not 240 days. The best available evidence would be in the form of the pay register and the attendance register. The witness on behalf of the petitioner in his examination-in-chief has stated that the respondent had worked for 209 days, but he has neither produced the necessary evidence nor he was able to show whether the respondent got weekly holidays. It appears that the pay register was produced but it was not exhibited. Meaning thereby that the petitioner's representative had not even taken care to see that the document which was produced before the Labour Court formed part of its record. In that view of the matter, the pay register cannot be looked into. Mr. Bhate has

tried to show the attendance register in respect of respondent. However, I am exercising my jurisdiction under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India. The document which is not on record of the Labour Court cannot be looked into by me at this stage. Thus, there is no evidence on record to show that the respondent had not worked for 240 days but had worked 209 days only. It is, therefore, not difficult for this Court to agree with the conclusion drawn by the Labour Court.

3.1. Secondly, when the respondent is found to be workman, naturally before terminating his service, necessary procedure under section 25-F of the I.D. Act was required to be followed. Admittedly, the same has not been done. It is the case of the petitioner that he had voluntarily abandoned the service. Except the bare words of the petitioner, there is no material on record to come to the said conclusion. On the contrary, it appears that from the very beginning the respondent had been agitating against the order of dismissal passed against him. If he had abandoned employment voluntarily, he would not have done so.

4. In view of the aforesaid, I do not see any reason to interfere with the award made by the Labour Court. This petition has, therefore, no merits and it is ordered to be dismissed. Rule discharged with no order as to costs. Interim relief stands vacated.

[AKSHAY H. MEHTA, J.]

* Pansala.